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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/838,043	04/18/2001	Donald J. Mischo	MISCHO-2	2963

20606 7590 02/27/2003

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ROCKFORD, IL 61101

EXAMINER

LECHERT JR, STEPHEN J

ART UNIT	PAPER NUMBER
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1732

DATE MAILED: 02/27/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

09/838,043

Applicant(s)

MISCHO, DONALD J.

Examiner

Stephen J. Lechert Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5, 8 and 9 is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 7 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

1. The abstract of the disclosure is objected to because it is too long. Applicant is reminded that the abstract should be a concise statement of the claimed invention without using legal phraseology in a single paragraph between 50-150 words.

Correction is required. See MPEP § 608.01(b).

2. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims (original) 5-11 have been renumbered as Claims 4-10. The dependency of these claims has been changed correspondingly. Applicant is kindly requested to change his number while prosecuting this application, so that confusion on the numbering of claims is precluded.

3. Claims 1-3 and 6-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, step (e), "molding" lacks positive antecedence. In claim 5 applicant recites softening in step (e). However, in claim 6, it is not clear whether raising the temperature is the softening step or an additional softening step which renders the claim indefinite.

4. Claims 2-3 and 7 are rejected as being dependent upon a rejected base claim.

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5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 4 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Gehrke et al.

Gehrke et al. teach using recycled asphalt shingles to produce a fine aggregate-asphalt mixture. The recycled shingles are ground in a hammer mill[Note Column 6, lines 64-65], then extruded and cut to produce a shaped part. Gehrke et al. teaches that the asphalt shingles contain a coating of fine minerals, which would meet applicant's mixture of fine aggregate and asphalt mixture. [Note Column 5, lines 43-49]. The extrusion apparatus is found in Column 10, lines 49-53. The cutting apparatus for producing the shaped part after extrusion is found in Column 11, lines 50-67 and Column 12, line 1-4. The apparatus as described by Gehrke et al. specifically provides material inlet to receive shingle material, a grinder and extruder having an inlet to receive the ground material from the grinder and a die cutter or cutting station and the extrusion molding station associating with the extruder for receiving the extrudate material to produce a shaped product therefrom.

7. Claims 1-3 and 5-9 are free of the prior art.

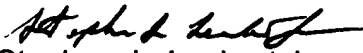
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Niwa et al. teach a method of making fibrous plate comprised of asphalt and fibrous raw material.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Lechert Jr. whose telephone number is 703-305-6156. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard D. Crispino can be reached on 703-308-3853. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.


Stephen J. Lechert Jr.
Primary Examiner
Art Unit 1732

February 24, 2003